

UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA

PAUL SVINDLAND and ALLISON
SVINDLAND, as Parents and Natural
Guardians and Administrators of the
Estate of IAN SVINDLAND, a Minor
Deceased, and PAUL SVINDLAND
and ALLISON SVINDLAND,
Individually and in Their Own Right,
Plaintiffs

v.

No. 2:05-cv-00417-MAM

JURY TRIAL DEMANDED

THE NEMOURS FOUNDATION and
WILLIAM I. NORWOOD, M.D., PH.D.,
Defendants

ORDER

AND NOW, this _____ day of August, 2009, after consideration of Plaintiffs' Petition for an award of Bill of Costs, it hereby ORDERED that the Defendants shall pay the following total costs: \$41,274.43.

The itemization of the taxable costs that make up the total is as follows:

Fees for Transcripts:	\$29,1989.83
Fees for witnesses	1,863.00
Fees for exemplification and copies	5,690.66
Docket fees under 28 U.S.C. 1923	1055.40
Other costs	3,475.54

BY THE CLERK:

AO 133 (Rev. 11/08) Bill of Costs

UNITED STATES DISTRICT COURT

for the
Eastern District of PennsylvaniaSvindland
v.
The Nemours Foundation

Case No.: 05-CV-0417

Bill of Costs

Judgment having been entered in the above entitled 06/19/2009 against Defendants
Date

FILED

AUG 12 2009

MICHAEL E. KUNZ, Clerk
Dep. Clerk

the Clerk is requested to tax the following as costs:

Fees of the Clerk	
Fees for service of summons and subpoena	
Fees for printed or electronically recorded transcripts necessarily obtained for use in the case	29,189.83
Fees and disbursements for printing	
Fees for witnesses (itemize on page two)	1,863.00
Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case	5,690.66
Docket fees under 28 U.S.C. 1923	1,055.40
Costs as shown on Mandate of Court of Appeals	
Compensation of court-appointed experts	
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828	3,475.54
Other costs (please itemize)	
TOTAL	\$ 41,274.43

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

Declaration

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill has been served on all parties in the following manner:

- ☒ Electronic service by e-mail as set forth below and/or.
☐ Conventional service by first class mail, postage prepaid as set forth below.

s/ Attorney: _____

Name of Attorney: Frank M. McClellan, EsquireFor: Plaintiffs, Paul Svindland, et alDate: 08/07/2009Costs are taxed in the amount of \$41,274.53 and included in the judgment.

By: _____

Deputy Clerk

Date

Clerk of Court

AO 133 (Rev. 11/08) Bill of Costs

UNITED STATES DISTRICT COURT

Witness Fees (computation, cf. 28 U.S.C. 1821 for statutory fees)						
NAME, CITY AND STATE OF RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE	
	Days	Total Cost	Days	Total Cost	Miles	Total Cost
Dr. Andre J. duPlessis Boston, MA	1	40.00	1	167.00		\$207.00
Dr. Robert Hannan Miami, FL	2	80.00	2	334.00		\$414.00
Dr. Harvey Rosen Cleveland, OH	2	80.00	2	334.00		\$414.00
Dr. J. Gilbert Stone New York, NY	4	160.00	4	568.00		\$828.00
						\$0.00
						\$0.00
					TOTAL	\$1,863.00

NOTICE

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:
 "Sec. 1924. Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28, which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Federal Rules of Civil Procedure contain the following provisions:
 RULE 54(d)(1)

Costs Other than Attorneys' Fees.

Unless a federal statute, these rules, or a court order provides otherwise, costs — other than attorney's fees — should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 1 day's notice. On motion served within the next 5 days, the court may review the clerk's action.

RULE 6

(d) Additional Time After Certain Kinds of Service.

When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).

RULE 58(e)

Cost or Fee Awards:

Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

Witness Fees (computation, cf. 28 U.S.C. 1821 for statutory fees) Total: \$1,863.00

Name & Residence	Attendance		Subsistence		Total Cost	
	Days	Total cost	Days	Cost	Each witness	Year
Adre J. duPlessis Boston, MA	1	40.00	1	167.00	207.00	2007
Robert Hannan, M.D.	1	40.00	1	167.00	207.00	2007
Robert Hannan, MD Miami, FL	1	40.00	1	167.00	207.00	2009
Harvey Rosen	1	40.00	1	167.00	207.00	2007
Harvey Rosen Cleveland, OH	1	40.00	1	167.00	207.00	2009
J. Gilbert Stone, M.D.	1	40.00	1	167.00	207.00	2007
J. Gilbert Stone, MD New York, NY	3	120.00	3	501.00	621.00	2009
Totals		\$360.00		\$1,503.00	\$1,863.00	

Fees for Court Reporter: \$29,189.83

Invoice Date	Description	Amount
6/14/05	DeCrescenzo video deposition of Dr. Kerins	2,470.95
7/21/05	DeCrescenzo video deposition of Dr. Duncan	3,772.75
	subtotal	6,243.70
1/10/07	First Services deposition of Allison Svindland	627.06
1/10/07	First Services deposition of Paul Svindland	351.39
1/10/07	First Services deposition of Claude & Geraldine Pachini	345.95
3/23/07	Esquire Deposition Services	948.40
	subtotal	2,272.80
4/17/07	Aaron Berkowitz deposition of Dr. Mintz	386.25
5/03/07	Aaron Berkowitz deposition of Dr. Zimmerman	330.00
4/19/07	Harvey Krauss deposition transcript of Dr. Zimmerman	273.75
5/09/07	First Service video transcript of Dr. Barnes	1,189.30
7/06/07	Obrien & Levine deposition of Dr. duPlessis	531.40
	subtotal	2,710.70
4/10/07	James DeCrescenzo transcript of Dr. Barnes	553.90
5/17/07	Trial Technologies video production of trial proceedings	7,889.27
9/10/07	Esquire Depo. Service – transcript of Dr. Hyde	1,372.80
12/03/07	Esquire Depo. Service – transcript of Dr. Hannan	544.50
	subtotal	10,360.47
5/08/08	Esquire Depo. Service – transcript of Dr. Stone	354.35
10/21/08	Diana Doman Hearing transcript	23.32
	sub total	377.67
3/10/09	AZRS Rpt. Transcript of Dr. Pollack	385.20
3/11/09	Diana Doman (hearing transcript)	160.19
	subtotal	545.39
6/19/09	Veritext hearing transcript 5/07/07 – trial transcript 6/6, 10, 11,12,16	478.50
6/22/09	Bill Heilman Video Service 6/9-6/16/09; 6/15-6/18/09	2,700.00
5/28/09	Veritext trial transcript Allison 5/4/07	111.10
7/01/09	Veritext trial transcript	989.30
7/01/09	Veritext trial transcript Svindland cross	15.40
7/02/09	Veritext trial transcript of Dr. Warner	541.20
7/02/09	Veritext trial transcript of Dr. Baffa	470.80
7/02/09	Veritext trial transcript of Dr. Zimmerman	114.40
7/02/09	Veritext trial transcript of Dr. Bailey	444.40
7/16/09	Veritext trial transcript Drs. Norwood & DiSanto	814.00
	subtotal	6,679.10

Fees and disbursements for printing/copying: \$5,690.66

Invoice Date	Description	Amount
9/29/04	A.I. DuPont Hosp. for Children (copy)	15.00
7/24/06	McCann & Geshke (copies of records)	12.25
8/29/06	LRP Publications (medical records)	<u>166.00</u>
	subtotal	193.25
4/24/07	McCann & Geschke -- copying diskettes	686.40
1/06/07	Kline & Specter (copying)	295.55
3/22/07	Scott Memorial Library	13.00
4/30/07	Scott Memorial Library	7.00
4/17/07	reimb Theresa Blanco (copying)	<u>576.78</u>
	subtotal	1,578.73
4/27/07	MCS -- copying	344.71
4/27/07	MCS -- exhibit boards & lamination	205.44
5/01/07	MCS -- color exhibit boards	597.00
5/04/07	MCS -- exhibit boards	42.80
8/20/07	MCS -- velobinds	<u>96.30</u>
	subtotal	1,286.25
5/02/07	color exhibit board	381.60
6/10/09	digital color mount	202.23
3/02/07	litigation copies, index tabs, drilling	720.19
4/12/07	Nemours Foundation copies of scans	78.91
10/24/07	reimburse McCann & Geschke (costs of disks and binders)	686.40
11/28/08	Donna Bitner (Conant Legal Copying)	338.10
5/29/09	Brian Appel -- reimbursement (copying)	67.70
9/16/05	Florida Dept. of Health	112.30
5/26/09	U.S. District Court -- copies of old records	<u>45.00</u>
	subtotal	2,632.43

Fees for In-House Costs – Total: \$3,475.54

Year	Copying	Faxes @	Postage	Totals
2004	1.25	0	0	\$1.25
2005	3.00	8.00	0	\$11.00
2006	181.40	51.25	7.83	240.48
2007	1,094.70	17.25	2.16	1,114.11
2008	92.40	0	0	92.40
2009	2,016.30	0	0	2,016.30
Totals	\$3,389.05	\$76.50	\$9.99	\$3,475.54

Fees for Filing/Docketing: \$1,055.00

<u>Invoice Date</u>	<u>Description</u>	<u>Amount</u>
1/31/05	Filing complaint	150.00
6/11/07	US district court -- filing appeal	455.00
6/05/09	US court of appeals -- filing mandamus	<u>450.00</u>
		\$1,055.00

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SVINDLAND, ET AL. : CIVIL ACTION
:
v. :
THE NEMOURS FOUNDATION, ET AL. : NO. 05-0417

AFFIDAVIT OF FRANK M. MCCLELLAN
IN SUPPORT OF THE BILL OF COSTS

FILED
AUG 12 2009
MICHAEL KUNZ, Clerk
By [Signature] Dep. Clerk

I, Frank M. McClellan, do hereby swear and aver as follows:

1. I am an attorney who represented the Plaintiffs at trial in the above captioned action that resulted in the entry of judgment in favor of the Plaintiffs against Defendants on June 19, 2009, following the jury trial. The taxable costs for expenses necessarily incurred in litigating this case are set forth in this Petition, with supporting exhibits as follows:
2. The fee for court Reporters is \$29,189.83. The itemization for that amount is set forth in Exhibit A. The invoices supporting the itemization for Court Reporters are attached.
3. The fee and disbursements for Copying and Printing is \$1,863.00. The itemization for those fees and disbursements is set forth in Exhibit B, with supporting documents.

4. The fee for exemplification and copies of any materials where the copies are necessarily obtained for use in this case is \$5,690.66 The itemization for those costs is set forth in Exhibit C with supporting documents
5. The docketing fee is \$1,055.40, and is set forth in exhibit D.
6. Other Costs: In-house-copying – total \$3,475.54
7. Costs that were incurred but not taxable have been redacted from the exhibits.
8. The total for the Bill of Costs is \$41,274.43

I declare that the foregoing and attached documentation are true and correct.

Fmm4796

A handwritten signature in cursive script, reading "Frank M. McClellan", written over a horizontal line.

Frank M. McClellan, Esquire

CERTIFICATE OF SERVICE

I, Frank M. McClellan, attorney for Plaintiffs, certify that the original of the attached Bill of Costs was filed electronically with the Court and is available for viewing and downloading from the ECF system on August 10, 2009..

Eaton & McClellan

Fmm4796

By:



Frank M. McClellan

